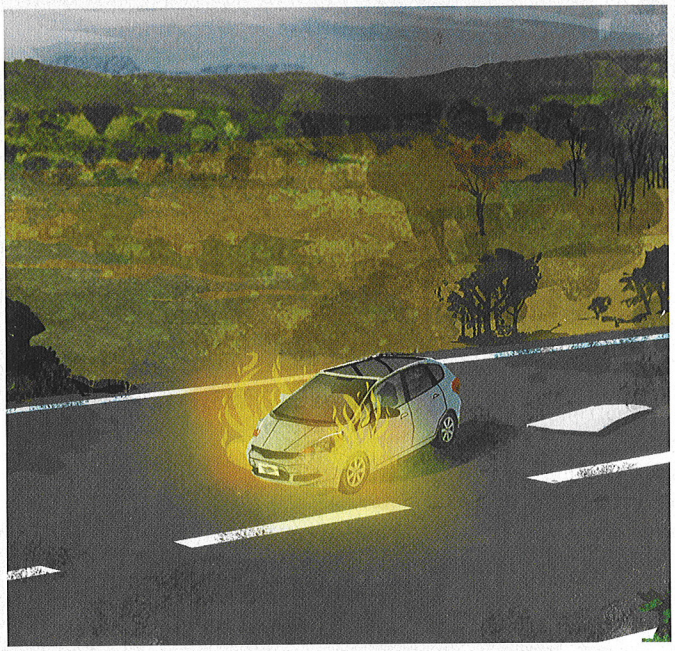
Verdicts & SETTLEMENTS



NEGLIGENCE

Collision center glued on roof, resulting in car's catastrophic structural failure

In August 2013, Matthew and Marcia Seebachan purchased a used 2010 Honda Fit from a car dealer, relying on a CARFAX vehicle report indicating that the car had a clean history, with no structural repairs or hail damage. Unbeknownst to the Seebachans, the Fit's prior owner had taken it to John Eagle Collision Center in 2012 to repair hail damage to its roof. Rather than welding a new steel roof to the vehicle using 108 welds, as specified by Honda, the collision center used a glue-like adhesive to attach the roof.

In December 2013, the Seebachans were traveling on a highway when a Toyota pickup truck hydroplaned and struck the Honda head on. On impact, the Honda's roof separated from the body of the vehicle. The roof separation set off a chain of structural failures: The safety cage collapsed; the driver's side roof rail deformed; and the rocker panel underneath the vehicle collapsed, puncturing the gas tank beneath the driver's seat. A fuel-fed fire erupted, engulfing Matthew's lower legs, which were trapped by an intruding floor pan. Good Samaritans pulled the couple from the vehicle, but both Seebachans sustained severe injuries.

Matthew, 33, suffered third- and fourth-degree burns to his lower legs and feet; fractures to both heels, his left arm, and multiple ribs; bilateral carotid artery dissections; and multiple lacerations to his forehead. Matthew also suffered acute respiratory failure. He underwent two years of extensive treatment for his burns, including debridement, skin grafting, and 13 surgeries. His burn treatment was delayed due to the open reduction internal fixation of the fractures. He remains unable to place any pressure on his feet. He uses a walker and lives with constant, excruciating nerve pain in his feet so severe that he must wear a fentanyl patch on a 24-hour basis. At the time of the incident, Matthew was attending nursing school, but he was forced to abandon those career plans.

Marcia, 29, sustained an atlanto-occipital dissociation, an often-fatal injury in which the ligaments and bony structures of the spinal column separate from the base of the skull. She also suffered bilateral carotid artery dissections; transection of the thoracic aorta; bilateral pulmonary contusions and bilateral hemothoraces, or blood in the pleural cavity; bilateral renal contusions; and multiple fractures to the sternum, right arm, pelvis, left leg, and left foot. She underwent open reduction internal fixation of the fractures. The couple's combined medical expenses exceeded $1 million.

The Seebachans sued John Eagle Collision Center, alleging that the company was negligent and grossly negligent for using a defective and untested repair method to attach the new roof. The plaintiffs asserted that the dealership made a business decision to use the unauthorized repair, for which the insurer paid $8,500. In deposition testimony, the defendant's body shop director reportedly acknowledged that the company failed to follow Honda's repair specifications, which called for welding the roof. At trial, the defendant's corporate representative admitted that insurance companies always dictated which repair methods would be permitted and paid for. He also allegedly admitted that his company had failed to follow the 2009–2013 Honda Fit Body Repair Manual.

The plaintiffs' experts testified about how the roof would not have separated if it had been welded, as specified, and how separation of the roof caused the series of of structural failures that led to the plaintiffs' catastrophic injuries. The experts testified that if the Fit's roof had been welded, the Seebachans likely would have sustained only minor injuries. Other evidence showed that there was no way the Seebachans or the dealership that sold them the car could have detected

ILLUSTRATION BY EVA VÁZQUEZ

police officers David Corcoran and Alexander Saldana began yelling at Bedetti, blocking his access to his intended parking space. Bedetti left his vehicle and identified himself as a police officer; however, the encounter ended in an altercation that resulted in the officers sweeping Bedetti to the ground and punching him in the face and head. Bedetti was subsequently arrested and prosecuted for driving under the influence, making criminal threats, and interfering with a police investigation. He was found not guilty.

Bedetti sued the city of Long Beach and Corcoran and Saldana, individually, alleging excessive force in violation of the Fourth Amendment and state law claims for battery and negligence.

The jury awarded $3 million, including $2,500 in punitive damages against Corcoran. Posttrial motions are reportedly pending.

CITATION: *Bedetti v. City of Long Beach*, No. 2:14CV09102 (C.D. Cal. May 8, 2017). **PLAINTIFF COUNSEL:** Mark Pachowicz and Jonny Russell, both of Camarillo, Calif. **PLAINTIFF EXPERT:** Curt Rothschiller, police procedures, Camarillo.

GOVERNMENT LIABILITY

Sanitation worker fatally crushed between street sweepers

Steven Frosch operated a street sweeper for the New York City Department of Sanitation. He was at a department garage greasing the brushes on one of the street sweepers when his coworker, Antonio DeCaro, stopped another street sweeper next to him. As DeCaro was waiting, he reached down to unplug his Bluetooth radio. DeCaro's vehicle lurched forward, crushing Frosch between the two vehicles.

Frosch, 43, suffered multiple internal crush injuries, including a severed spinal cord, a ruptured diaphragm, and spleen and kidney damage. He was pronounced dead at the scene within 10 minutes. He is survived by his wife, Colombina, and the couple's four minor children.

Colombina Frosch, individually and on behalf of her husband's estate, sued DeCaro and the city, alleging that DeCaro negligently failed to put his vehicle in park before reaching for his radio.

DeCaro initially argued that the street sweeper had malfunctioned, but the defendants later admitted liability, and the case proceeded to trial against the city on damages.

The plaintiffs claimed approximately $9.8 million for future lost earning capacity, arguing that Frosch had planned to retire from the department in two years and start a new career as a financial planner. The plaintiffs also sought damages for Frosch's conscious predeath pain and suffering, as well as the children's loss of parental care and guidance.

The city argued that Frosch suffered no conscious pain and suffering, suggesting that he had lost consciousness immediately. The defense also disputed whether Frosch would have become a financial planner and argued that future damages were speculative.

During trial, the plaintiffs demanded $18.5 million to settle. The defendants offered $6 million, which the plaintiffs rejected.

The jury awarded $41.5 million, including $25 million to the estate for future loss of pecuniary contribution, including loss of parental guidance; $15 million for past loss of pecuniary contribution; and $1.5 million for Frosch's conscious predeath pain and suffering.

As of this writing, counsel anticipates that the city will file a motion for remittitur.

CITATION: *Frosch v. City of New York*, No. 17285/14 (N.Y. Sup. Ct. Queens Cnty. Oct. 24, 2017). **PLAINTIFF COUNSEL:** AAJ members Ben B. Rubinowitz and Peter J. Saghir, both of New York City. **PLAINTIFF EXPERTS:** Charles Wetli, pathology, Alpine, N.J.; and Kristin Kucsma, economics, Livingston, N.J. **DEFENSE EXPERTS:** John McManus, accident reconstruction, Pleasantville, N.Y.; and Ronald Quintero, economics, New York City.

MOTOR VEHICLE LIABILITY

Tired trucker causes fatal collision

Atinderpal "Gavan" Singh, a commercial trucker, was driving his tractor-trailer eastbound on Interstate 80 in Nebraska. Freddie Galloway, a trucker for Ecklund Logistics, Inc., was also driving eastbound on the interstate, some distance ahead of Singh. It was late summer, and a grass fire had broken out on the highway median. Local fire and sheriff personnel were on the scene attempting to contain the fire and control traffic. Galloway heard about the fire on his CB radio while still several miles away and slowed his truck to 5 mph in a 75-mph zone, driving at that speed for five to 10 minutes as he approached the area of the fire.

Singh, 23, came upon Galloway's truck and was unable to slow down in time. As he steered left to try to avoid the truck, the front of his cab struck Galloway's trailer. Singh's truck exploded on impact, and he was ejected from the cab. He sustained massive injuries and died at the scene. At the time of his death, his wife was pregnant with the couple's first child, who was born one month after his father's death.

Singh's wife, individually and on behalf of his estate and the couple's infant son, sued Galloway and Ecklund Logistics, alleging that Galloway was negligent in driving too slowly under the circumstances and in failing to activate his hazard lights, driving while fatigued and distracted, and failing to

properly control his vehicle and keep a proper lookout. The plaintiffs also alleged negligence per se for Galloway's violation of a state statute prohibiting slow driving that impedes the flow of traffic.

The lawsuit included a claim against Ecklund Logistics for negligent hiring, but the defense obtained summary judgment on that claim.

The plaintiffs presented evidence that at the time of the crash, Galloway was driving in violation of federal hours-of-service regulations and had falsified his logbook. The plaintiffs asserted that two days before the collision, Galloway filled out his log in a way that showed he was off duty for a 24-hour period. He also completed a log for the same day, however, showing that he spent that day on duty, driving and making stops. Galloway reportedly admitted at deposition to being on duty and expressed confusion when confronted with a second logbook page for the same day showing that he was off duty. When the accurate logbook page was considered, the plaintiffs contended, it showed that Galloway had been driving or on duty more than 70 hours over the maximum allowable time for an eight-day period.

The plaintiffs also offered Galloway's deposition testimony, in which he admitted that he was talking on his cell phone at the time of the crash, and his testimony acknowledging that he had slowed to 5 mph.

The defendants argued that Galloway was using his hazard lights and that Singh failed to keep a proper lookout and observe the lights and trailer.

To counter the hazard lights claim, plaintiff counsel presented video obtained from the local sheriff's office showing Galloway's truck immediately after the crash. In the video, the truck's flashing lights are blinking on the left side only. At trial, the plaintiffs showed the video to the Nebraska state trooper who had inspected the truck after the crash and determined that the lights were functioning properly. The trooper testified that the video showed that the truck's left turn signal was illuminated after the wreck, not the hazard lights.

The jury allocated fault at 55 percent to Galloway and 45 percent to Singh and awarded approximately $2.25 million. After reduction for fault, the verdict totaled approximately $1.24 million. As of this writing, a defense motion for a new trial is pending.

CITATION: *Basra v. Ecklund Logistics, Inc.*, No. 8:16-cv-00083 (D. Neb. Aug. 29, 2017). **PLAINTIFF COUNSEL:** AAJ members Justin R. Kaufman and Rosalind B. Bienvenu, both of Santa Fe, N.M.; AAJ member Stephen J. Kelly, Santa Monica, Calif.; and AAJ member Christopher P. Welsh, Omaha. **PLAINTIFF EXPERTS:** Steve Irwin, accident reconstruction, Dallas; Lew Grill, trucking practices, Billings, Mont.; and David Rosenbaum, economics, Lincoln, Neb. **DEFENSE EXPERT:** Steve Sokol, accident reconstruction, Omaha.

Failure to maintain lane

Thomas Dempsey, a 78-year-old man who suffered from longtime numbness and tingling in his feet, was driving his SUV on a busy four-lane roadway during a cross-country trip. He exited the roadway to use a restroom and approached a line of stopped cars. Dempsey was unable to take his foot off the accelerator and swerved his vehicle onto a grassy median, which caused the SUV to accelerate and hit a deep drainage ditch. This, in turn, caused the SUV to become airborne and eventually land on top of a truck driven by Boris Woodard, 59. The impact caused both the SUV and the truck to cross two lanes of traffic and roll down an embankment.

Woodard suffered eye injuries and bruising. He also suffered emotional distress from witnessing the injury to his 25-year-old daughter, Anna, who was his passenger. She fell into a coma and was hospitalized for nine days before she died of her crash-related injuries. A student who hoped to work in the childcare field, Anna is survived by her parents. Her medical expenses totaled hundreds of thousands of dollars.

A time-limited settlement demand was made to Grange Mutual Casualty Co., to recover on Dempsey's $50,000/$100,000 insurance policy. The demand required Grange to pay within 10 days of acceptance. The insurer sent a written acceptance on the day the demand was to expire; however, the funds did not arrive within 10 days.

Woodard, individually and together with his wife, sued Dempsey, alleging he failed to maintain his lane and was driving too fast for the conditions. The plaintiffs argued that Dempsey's medical problems and his history of falling should have put him on notice that he should not have been driving cross-country. Grange filed a declaratory judgment, asserting that settlement had occurred in the case. The state high court later ruled that no settlement had occurred.

The parties settled for $6.75 million several days before trial.

CITATION: *Woodard v. Dempsey*, No. 1:14-cv-03701-RWS (N.D. Ga. Jan. 26, 2018). **PLAINTIFF COUNSEL:** AAJ members Michael Neff, D. Dwayne Adams, Susan Cremer, and T. Shane Peagler, all of Atlanta.

PREMISES LIABILITY

Negligent placement of PVC pipe on beginner ski slope

Judy Zhou, 9, went skiing at the Tuxedo Ridge Ski Center in New York. While on a beginner hill, she struck a heavy, white PVC pipe that was drilled into the snow near the chair lift line and extended 20 feet across the ski area. Zhou suffered a fractured right femur at its growth plate, necessitating open reduction surgery and three months of physical therapy. Additionally, she required a brace for the next two years. Now 13, her right leg remains angled and is shorter than her left. Her past medical expenses totaled approximately $61,200.

Zhou's parents, individually and on her behalf, filed suit against the ski resort and its owner, alleging negligent placement of the PVC pipe across the beginner hill. The plaintiffs' expert testified that the defendants should have applied orange paint to the pipe, which was camouflaged by the snow, and that the pipe lacked an orange disk, which—if affixed to the top of the pipe—would have alerted skiers to its presence.

The jury awarded the plaintiffs $19 million. The court denied the defendants' motion for a new damages trial or for remittitur.

CITATION: *Zhou v. Tuxedo Ridge, LLC*, No. 1229/14 (N.Y. Sup. Ct. Queens Cnty. Nov. 29, 2017). **PLAINTIFF COUNSEL:** AAJ member Souren A. Israelyan, New York City.

Pallet underneath store display posed hidden danger

Alabama resident Henry Walker, 59, was shopping at a local Walmart store. As he reached to pick up a watermelon from a container display, his foot became lodged in the side opening of a pallet beneath the container. When he turned to walk away, he fell, breaking his left hip.

Walker was taken to the hospital, where he underwent open reduction internal fixation of the fracture, followed by physical therapy. He developed blood clots and spent time at an assisted living facility. His medical expenses totaled approximately $84,000.

He continues to suffer pain and a limited range of motion in his hip, and he now uses a walker. A retired U.S. Army veteran who played basketball three times a week before the incident, Walker now endures a sedentary lifestyle.

Walker sued the store, alleging that the pallet constituted a hidden hazard on the premises and that the store was negligent and reckless for failing to remove or modify the pallet or warn of